IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1733

WAYNE STANTON, *et al.*,
Petitioners,

v.

CATHERINE MACKEY, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioners Wayne Stanton, et al., respectfully pray this Court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit (hereinafter Seventh Circuit) entered in cause number 78-1513 on November 8, 1978, (reported at 586 F.2d 1126), rehearing denied February 16, 1979, which reversed the judgment of the United States District Court for the Northern District of Indiana, South Bend Division (hereinafter District Court).

OPINIONS BELOW

The opinion of the Seventh Circuit, issued November 8, 1978, has been reported at 586 F.2d 1126. A copy of this

opinion has been appended at page A-1. The District Court's Findings of Fact, Conclusions of Law and Judgment, filed March 6, 1978, have not been reported, but a copy has been appended hereto at Page A-10.

JURISDICTION

Pursuant to 28 U.S.C. § 1254(1) and Rule 19(1)(b) of this Court, this Court has jurisdiction to review the opinion of the Seventh Circuit which decided a federal question in a way that conflicts with applicable decisions of this Court.

This cause was decided by the Seventh Circuit on November 8, 1978. The petitioners' timely Petition for Rehearing, was denied by written order, on February 16, 1979, a copy of which is appended hereto at A-10. Pursuant to Rule 22 (1) of this Court, this petition is timely in that it is filed prior to the expiration of ninety (90) days following the Seventh Circuit's denial of the petitioners' Petition for Rehearing.

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Seventh Circuit's holding that the respondents showed that damages were recoverable conflicts with the Eleventh Amendment bar to money damages as stated in *Edelman v. Jordan,* 415 U.S. 651 (1974).

II. Whether the Seventh Circuit erred by holding that the respondents had suffered harm from the practices of the Elkhart County Department of Public Welfare.

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

This case involves the following constitutional and state statutory provisions:

The Eleventh Amendment to the Constitution of the United States, which reads as follows:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

The following Indiana statutes are also involved, the texts of which are appended at A-17:

Ind. Code § 12-1-2-3;
Ind. Code § 12-1-3-7;
Ind. Code § 12-1-3-8;
Ind. Code § 12-1-11-1;
Ind. Code § 12-1-11-2;
Ind. Code § 12-1-11-3;
Ind. Code § 12-1-18-2.

STATEMENT OF THE CASE

The respondents originally attempted to bring this action as a class action attacking a policy of the Elkhart County Welfare Department pertaining to the payment of support to recipients of Aid to Families with dependent children. The respondents sought injunctive, declaratory, and monetary relief. Passage of Title IV-D of the Social Security Act, 42 U.S.C. § 602(a)(28) (1974), and *Ind. Code* 12-1-6-1 et. seq. rendered moot the request for injunctive relief. The respondents' attempt to receive a monetary judgment for alleged past discrepancies in benefits payments failed when the District Court treated the petitioners' motion to dismiss the respondents complaint as a motion for summary judgment and granted summary judgment for the petitioners.

The Seventh Circuit, in an opinion published at 586 F.2d 1126, reversed the decision of the district court and remanded for further proceedings.

Facts Material to Consideration of the Questions Presented

The respondents are mothers of minor children who receive aid to Families with Dependent Children (AFDC) from the Elkhart County and Indiana Department of Public Welfare.

The fathers of the respondents' children have been ordered by the Elkhart County Circuit Court to pay support for the children. The court orders provide that the payments must be made to the Elkhart County Department of Public Welfare to partially reimburse the department for assistance granted. A state court procedure has been available to the respondents to allow them to appeal or modify the court orders.

AFDC benefits are determined and paid on a monthly basis. At no time could the respondents receive payment out of the support moneys greater than their unmet needs (adjusted needs minus the quantity of the AFDC award plus income) and remain eligible for AFDC and other related benefits for that month.

The respondents have shown that they received the maximum AFDC award and had unmet needs for certain months during the time that support payments were made on their behalf to the Elkhart County Department of Public Welfare. However, the respondents have failed to show that they would have received more income or benefits if the payments had been directly paid to them.

REASONS FOR ALLOWANCE OF THE WRIT

I.

The Eleventh Amendment Bars Recovery of Retroactive Payment Sought by the Plaintiffs

This Court held in *Edelman v. Jordan,* 415 U.S. 651 (1974), that retroactive payments from State funds are barred by the Eleventh Amendment. That holding was recently upheld in the case of *Quern v. Jordan,* — U.S. —, 99 S.Ct. 1139, (1979). In *Mt. Healthy City School District v. Doyle,* 429 U.S. 274, (1977), this Court held that the Mt. Healthy Board of Education should not be treated as an arm of the State for Eleventh Amendment purposes. In so holding, this Court relied upon the fact that:

> . . . Under Ohio law the 'state' does not include 'political subdivisions,' and 'political subdivisions' do include local school districts. Ohio Rev. Code § 2743.01. Petitioner is but one of many local school boards within the State of Ohio. It is subject to some guidance from the State Board of Education, Ohio Rev. Code § 3301.07, and receives a significant amount of money from the State. Ohio Rev. Code, ch. 3317. But local school boards have extensive powers to issue bonds, Ohio Rev. Code § 133.27, and to levy taxes within certain restrictions of state law. Ohio Rev. Code §§ 5705.02, 5705.03, 5705.192, 5705.194 . . . *Mt. Healthy School District v. Doyle, supra,* 97 S.Ct. at 572.

Indiana, however, does not have a provision that includes County Welfare Departments as political subdivisions that are separate from the State. Indeed, a review of the statutes establishing the State Department of Public Welfare, and the County Departments, reveals that while there is some autonomy between the two, there is sufficient inter-

dependence to establish that the County Welfare Departments are more of an arm of the State for Eleventh Amendment purposes, than autonomous political subdivisions.

Assistants to the County Director, with the exception of institutional employees, must be appointed from "eligible lists established by the Indiana personnel board." *Ind. Code* § 12-1-3-7. Compensation for these assistants must be fixed within the salary ranges adopted by the Indiana personnel board and adopted by the State budget committee. *Ind. Code* § 12-1-3-7.

The State Department of Public Welfare is charged with the administration or supervision of all public welfare activities in the State. *Ind. Code* § 12-1-2-3. Indeed, the State Department of Public Welfare must provide services to County governments, ". . . including the organization and supervision of county departments for the effective administration of public welfare functions." *Ind. Code* § 12-1-2-3(e). The State department has the power to increase or decrease County budgets. *Ind. Code* § 12-1-11-2, and the State has the duty to reimburse the counties for administrative expenses and for funds expended for assistance to dependent children. *Ind. Code* § 12-1-3-8 and *Ind. Code* § 12-1-18-2. State reimbursements are co-mingled with funds raised by tax levies and constitute the County welfare fund. *Ind. Code* § 12-1-11-1. This fund is used to pay the awards, claims, allowances, assistance and other expenses set forth in the annual budget. *Ind. Code* § 12-1-11-1. Should the appropriations for welfare services be exhausted, the County must make additional appropriations from the County or general funds. *Ind. Code* § 12-1-11-3(b).

Any judgment against the petitioners, who administer the welfare programs, is a judgment against state and county

officials, and therefore, a judgment against the political entity, not the private person. Funds to satisfy the judgment, therefore, must come from the political entity, not the person. In addition, the Seventh Circuit allowed the recovery since the claims "can be satisfied from moneys raised . . . through the exercise of [the county department's] taxing and borrowing power." 586 F.2d at 1130. However, the significant factor is not the *source* of the funds, but the reason for which the funds will be expended. It is obvious that these funds will pay for what the Seventh Circuit considers "a monetary loss resulting from a past breach of a legal duty" on the part of the defendants, and "not as a necessary consequence of compliance in the future with a substantive federal-question determination." *Edelman v. Jordan, supra,* 415 U.S., at 668. As shown, above, while the county welfare department has some power to levy taxes and issue bonds, the overall interrelationship between the County departments and the State department is such that a judgment against the County will affect the State and, consequently, State funds. This factor, along with the fact that the State has more control over the County welfare departments than the control exercisable by the State of Ohio over the Mount Healthy Board of Education serves to distinguish this case from the *Mt. Healthy School District v. Doyle* situation. Thus, payment of the claims falls squarely under *Edelman*, and the claims are barred by the Eleventh Amendment.

The County welfare departments act more as an extension of the State welfare department than as totally autonomous political entities. Because of this relationship, the Eleventh Amendment bar to recovery of retroactive damages expressed in *Edelman v. Jordan, supra* applies to bar the possibility of recovering damages in this case. There-

fore, the Seventh Circuit erred by holding that damages, if provable, were recoverable from the petitioners.

II.

The Respondents Have Not Established That They Were Harmed by the Practices of the Elkhart County Department of Welfare

In its November 8, 1978, decision, the Seventh Circuit held that from the summary judgment papers it would appear that the plaintiffs have suffered harm.

The District Court found that although the respondents had shown that there were periods in which they had unmet needs and in which support payments were made, the respondents have failed to show by month-to-month comparison of support payments and unmet needs, that at any time they would have received more total income of benefits if support payments had been made to them directly. In light of these findings, and the fact that the respondents also moved for summary judgment, the decision of November 8, 1978, is clearly erroneous in holding that, "It appears from the summary judgment papers that . . . the respondents have suffered harm."

CONCLUSION

For the foregoing reasons, the petitioners pray that this Court issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review its decision in this cause and grant all other just and proper relief in the premises.

Respectfully submitted,

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APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 78-1513

CATHERINE MACKEY, et al.,
Plaintiffs-Appellants,
v.
WAYNE STANTON, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.
Allen Sharp, *Judge.*
No. Civil S 74-229

ARGUED SEPTEMBER 27, 1978—DECIDED NOVEMBER 8, 1978

Before TONE, *Circuit Judge,* WISDOM, *Senior Circuit Judge,** and BAUER, *Circuit Judge.*

TONE, *Circuit Judge.* The principal issue before us is whether the Eleventh Amendment bars certain claims of recipients of Aid to Families with Dependent Children against a county welfare department. We are thus required to apply *Edelman v. Jordan,* 415 U.S. 651 (1974), and *Mt. Healthy City School District v. Doyle,* 429 U.S. 274 (1977).

Plaintiffs brought this action under 42 U.S.C. § 1983 on behalf of themselves and all Elkhart County welfare recipients entitled to court-ordered child support payments who

* The Honorable John Minor Wisdom, Senior Circuit Judge of the United States Court of Appeals for the Fifth Circuit, is sitting by designation.

did not receive those payments because of the Elkhart County Department of Public Welfare's practice of retaining those payments as reimbursements for amounts already paid to the welfare recipients as AFDC under 42 U.S.C. §§ 601-609.[1]

Plaintiffs assert that the department's practice violated the Equal Protection Clause of the Fourteenth Amendment and the directives of the Department of Health, Education and Welfare's Handbook of Public Assistance, Part IV § 3124 (1966). We find it unnecessary to evaluate plaintiffs' equal protection argument because the defendants' policy is in violation of the handbook, which has the status of an HEW regulation, *Worrell v. Sterrett* [1968-1971 Transfer Binder], Pov. L. Rep. (CCH) ¶ 10,575 (N.D. Ind. 1969); *cf. King v. Smith*, 392 U.S. 309, 318 n.14, 319 n.16, 331 n.31 (1968), and thus the force and effect of law. The relevant part of § 3124 reads as follows:

[1] To explain this practice, we must describe the manner in which the state calculates the needs of, and payments to, welfare families. According to Ind. Code Ann. § 12-1-7-5 through 12-1-7-7 (Burns), application for assistance is made to the county department, which investigates and then determines whether a child is eligible, and what amount he will receive. Plaintiffs describe the process for determining the amount awarded as follows: The "basic needs" and "actual shelter needs" for each family are determined and then added together to arrive at the family's "total needs." The total needs figure is multiplied by a "percentage reduction factor" to obtain the family's "adjusted total needs." *See* 45 C.F.R. § 233.20(a)(2)(ii) and (a)(3)(viii). The maximum AFDC grants available to the plaintiffs were always less than their adjusted total needs. The difference between adjusted total needs and the actual amount of the AFDC grants is called the "unmet needs." To reduce unmet needs, AFDC recipients are allowed to receive outside income without a reduction in their AFDC benefits until the total of the AFDC benefits and the outside income equals the adjusted total needs figure.

The challenged practice of the Elkhart County Department of Public Welfare was to pay the court-ordered support payments in their entirety to a county fund as reimbursement to the county for moneys expended as welfare payments. (No explanation was offered by either side as to how these reimbursement funds affected reimbursement claims made to the state department of public welfare pursuant to Ind. Code Ann. § 12-1-7-12 (Burns).) As a result, the families never received the support payments or any part thereof, even though they had unmet needs.

> Some States, because of . . . percentage reductions . . . make payments that do not meet need in full according to agency standards, but under the plan allow income of the recipient to be applied to make up the difference between the amount of assistance determined to be needed and the payment. Where this method (i.e., payment to the agency) is used the support payment received by the agency must be made available to the family to the extent of the difference between determined need and payment. The part of the support payment that exceeds such difference must be treated as a refund.

Plaintiffs originally sought both damages and declaratory and injunctive relief against the continued enforcement of this policy. Both sides agree that subsequent to the filing of this action the passage of Title IV-D of the Social Security Act, 42 U.S.C. § 602(a)(28) (1974), and its implementation by Ind. Code Ann. §§ 12-1-6-1, *et seq.* (Burns), have rendered the injunctive and declaratory relief unnecessary. Only the claim for damages remains.

The trial court granted the defendants' motion for summary judgment, holding that the claims for equitable and declaratory relief were mooted by the subsequent passage of Title IV-D of the Social Security Act, and that the plaintiffs failed to state a claim upon which relief can be granted because they were not harmed by the defendants' acts and therefore were not entitled to damages. The court also denied certification of the class because the named plaintiffs had suffered no harm and therefore were not representative of the purported class. Only damages and the propriety of a class action remain at issue. We conclude that defendants have failed to show the damages are not recoverable and therefore reverse the judgment. We also direct reconsideration of the class issue.

I.

A.

Before reaching the Eleventh Amendment issue we must consider whether plaintiffs' claims for money damages should otherwise survive the defendants' motion for summary judgment.

It appears from the summary judgment papers that, contrary to the District Court's view, the plaintiffs have suffered harm. Plaintiffs had unmet needs (see note 1, *supra*) in the same periods that the county department received and kept support payments made on their behalf. Section 3124 of the HEW Handbook explicitly commands that "the support payment received by the agency must be made available to the family to the extent of the difference between determined need and payment [*i.e.*, unmet needs]." The inescapable conclusion is that because of the department's policy, plaintiffs did not receive as much total income as they would have if the department had complied with federal regulations. Had those regulations been followed, plaintiffs would have received their AFDC and additional benefits.[2]

B.

We also disagree with the District Court's conclusion that "[i]n accepting and using the child support payments of Plaintiffs . . . the Elkhart County Department of Public Welfare acted in accordance with the terms of the court orders." The orders require that payment be made "to the Elkhart Co. Dept. of Public Welfare to partially reimburse said Department for expenses in connection with and maintenance of said child." Admittedly, this order is subject to more than one interpretation. Partial reimbursement may refer to the entire amount of each support payment or to only so much of each payment as exceeds the family's unmet needs.

[2] The defendants argue that "other elements of welfare law," such as clothing allowances and food stamps, reduce the amount of unmet needs but plaintiffs failed to take these factors into account in their calculations of harm. The trial court made no specific findings concerning the effects of these other elements. Given the present state of the record, we too are unclear as to the import of these factors. Defendants' point only serves to illustrate the need for a trial on the merits.

We adopt the latter interpretation. When confronted with a court order subject to two possible interpretations, one in compliance with applicable federal regulations, the other in violation of those regulations, we must presume that the court intended its order to comply with the controlling law.[3]

We therefore conclude that plaintiffs are entitled to a trial on their claims for damages unless those claims are barred by the Eleventh Amendment.

II.

The claims which *Edelman v. Jordan, supra,* 415 U.S. at 651, held barred by the Eleventh Amendment were against the Director of the Illinois Department of Public Aid, a state agency, and could be satisfied only from the general revenues of the state. *See Vargas v. Trainor,* 508 F.2d 485, 491 (7th Cir. 1974), *cert. denied,* 420 U.S. 1008 (1975). In the instant case the claims are asserted against the county department and its officials and can be satisfied from moneys raised by that department through the exercise of its taxing and borrowing powers. The question we must decide is whether *Edelman* is applicable on these facts.

[3] Indiana law provides further support for the view that the state court's order contemplated that only those portions of support payments that exceeded unmet needs would be used to reimburse the department. Ind. Code Ann. § 31-4-1-21 (Burns) requires that support payments ordered paid to the county department be placed in a fund in the county treasury called the County Welfare Trust Fund, to "be disbursed only for the benefit of the mother and child." Under this statute, the county department could retain only those amounts in excess of unmet needs as reimbursement. Thus, the interpretation of the court order relied upon by the county department was incompatible with state as well as federal law.

As a general rule, Eleventh Amendment immunity does not extend to counties and other local units of government. *See, e.g., Moor v. County of Alameda,* 411 U.S. 693 (1973). In *Mt. Healthy City School District v. Doyle, supra,* 429 U.S. at 274, the Court held that a local school board was not entitled to immunity under the Eleventh Amendment. Here, as in *Mt. Healthy,* the resolution of the immunity issue "depends, at least in part, upon the nature of the entity created by state law." 429 U.S. at 280. Thus, a comparison of the Indiana statutes concerning the Elkhart County Department of Public Welfare and the Ohio statutes concerning the Mt. Healthy City School District is necessary.

In *Mt. Healthy,* the Supreme Court reviewed Ohio statutes which subjected local school boards to the supervision of the state board of education, directed payment of a "significant amount" of state funds to the local boards, and authorized the local boards to issue bonds and levy taxes. After weighing the broad state controls and extensive state funding against the power to issue bonds and levy taxes, the Court held,

> On balance, the record before us indicates that a local school board such as petitioner is more like a county or city than it is like an arm of the State.

429 U.S. at 280. Although the Court did not express its reasons for reaching this result, it is inferable, especially in light of *Edelman*'s emphasis on the fact that in that case the judgment could be satisfied only from the general revenues of the state, that the Court was impressed with the statutory power of the local school district to raise its own funds when the need arose. The Court may have found Ohio Rev. Code Ann. § 133.27 (Page) particularly significant, because that statute authorizes the school district to collect money to pay judgments against it, indicating that the state treasury would not have to pay such judgments.

We now turn to the relevant Indiana statutes. The county department is subject to state supervision, Ind. Code Ann. § 12-1-3-3 (Burns), and is reimbursed by the

state for aid moneys expended, Ind. Code Ann. § 12-1-7-12 (Burns). But each county must maintain a welfare fund within the county treasury, raised by a separate county tax levy. Ind. Code Ann. § 12-1-11-1 (Burns). Subject to some state regulation, the county department compiles and adopts its own budget and plans and executes the necessary tax levy. Ind. Code Ann. §§ 12-1-11-2 and 12-1-11-3 (Burns). The county department is authorized to issue bonds in certain circumstances. Ind. Code Ann. §§ 12-1-11-5 through 12-1-11-11 (Burns). Ind. Code Ann. § 12-1-11-13 (Burns) authorizes the issuance of bonds for the purpose of funding indebtedness evidenced by judgments rendered against the county.

In all respects that the Supreme Court seemed to consider significant in *Mt. Healthy,* the county department here is similar to the school board in that case. Although both are subject to state supervision and depend heavily on state funds, they perform their duties on a local level. More important, both have the power to raise their own funds by tax levy and by bond issuance. Significantly, Ind. Code Ann. § 12-1-11-13 (Burns) is analogous to Ohio Rev. Code Ann. § 133.27 (Page), providing a manner for payment of judgments without resort to the state treasury.

The defendants also argue that payment of any judgments will be made from the state's general revenues, because the Indiana Department of Public Welfare reimburses the county department for amounts expended as AFDC, Ind. Code Ann. § 12-1-7-12 (Burns). We are not persuaded, however, that the state's general revenues would have to be used to pay the judgments. The statute provides for reimbursement for amounts paid out as AFDC, but does not provide for reimbursement for amounts disbursed to mothers and children out of the fund containing support payments made to the county department rather than to the families. Any judgments would be for support payment funds unlawfully withheld from plaintiffs and not AFDC benefits. That an indirect effect of the judgment might be to increase the amount of the state's subsidy to

its political subdivision was not controlling in *Mt. Healthy* and should not control here.

We hold that the *Mt. Healthy* decision governs this case and that therefore the Eleventh Amendment does not bar a money judgment against defendants. The action is therefore not moot.

III.

Defendants also argue that the plaintiffs should not be permitted to prosecute this § 1983 claim because they failed to exhaust their state remedies. The Supreme Court answered this contention in *Monroe v. Pape,* 365 U.S. 167 (1961): "The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." 365 U.S. at 183. This remains the law, as the Supreme Court has recently stated. *Huffman v. Pursue, Ltd.,* 420 U.S. 592, 609 n.21 (1975). *Cf. Zablocki v. Redhail,* 434 U.S. 374, 380 n.5 (1978).

Defendants' reliance on *Huffman v. Pursue, Ltd.,* 420 U.S. 592 (1975), is misplaced. The principles of federalism and the accompanying notions of comity applied in *Huffman* are relevant when the federal court is asked to issue injunctive or declaratory relief which would have the effect of interfering with or foreclosing state court proceedings or inappropriately reviewing the decision of a state court. In this case, however, plaintiffs do not seek relief of that nature but seek only damages resulting from violation of their federal rights. No interference with the state judicial process is involved.

Because plaintiffs had no quarrel with the state court's orders if interpreted as consonant with federal law, an appeal from those orders would have served no purpose. Any remedies plaintiffs may have failed to exhaust were therefore internal county department administrative remedies, which the record indicates may not have existed at all

and which in any event would appear to have been futile in view of the position taken by the defendants in this action.[4]

The judgment in this case must therefore be reversed and remanded for further proceedings. On remand, the District Court should reconsider its original determination of the class question, which appears to have been inextricably wound up with the court's view on the merits. In making this determination the court will of course give due weight to the existence of the important common questions of law decided by this opinion.

REVERSED AND REMANDED.

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[4] Defendants' argument that this action is not justiciable in federal court because it concerns a "domestic matter" solely within the purview of state law and courts is utterly without merit. Plaintiffs sue under a federal statute, § 1983, to recover for harm suffered as a result of violation of their federal rights. Characterization of the underlying regulated matter as "domestic" does not alter the federal nature of this claim.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CATHERINE MACKEY, et al.,
Plaintiffs
v.
WAYNE STANTON, et al.,
Defendants

No. S 74-229

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause comes before the Court on defendant's Motion to Dismiss. A hearing was held before this Court on December 17, 1976. Present for plaintiffs was Ivan E. Bodensteiner, Esq. Present for the State Defendants was Robert B. Wente, Deputy Attorney General and present for the County defendants was Robert J. Hepler, Esq. At this hearing all County defendants except Martha Spurgeon, in her official capacity as Director of the Elkhart County Department of Public Welfare and the members of the Elkhart County Welfare Board in their official capacities were dismissed and the Court ruled that defendants' Motion to Dismiss would be treated as a Motion for Summary Judgment. And the Court having heard the arguments and examined the record and exhibits filed in this cause hereby finds as follows:

FINDINGS OF FACT

1. Plaintiff Mackey received Aid to Families with Dependent Children (AFDC) on behalf of her minor children from the Elkhart County and Indiana State Departments of Public Welfare from December 1, 1963 through November 1, 1974.

2. Plaintiff Jones received AFDC on behalf of her minor children, Anthony Reynolds Jones and Felicia Darcella Jones, from April 1, 1969 through April 30, 1975.

3. Plaintiff Streiff received AFDC on behalf of her minor child, Shawn Kimberly Streiff from February 1, 1972 to May 1975 in which month Shawn Kimberly Streiff died.

4. The father of Plaintiff Mackey's minor children has been ordered to pay support payments to Plaintiff Mackey on behalf of her minor child.

5. Said support payments were payable to the Elkhart County Department of Public Welfare until November 1, 1974 pursuant to the terms of a court order which directed said payments to be used to partially reimburse Elkhart County for assistance paid to Plaintiff Mackey and her minor children.

6. On November 1, 1974 said support payments were made payable to Plaintiff Mackey upon her application to the Elkhart County Circuit Court for redirection of said payments.

7. The father of Plaintiff Jones' minor children has been ordered to make support payments to Plaintiff Jones on behalf of her minor children, Anthony Reynolds Jones and Felicia Darcella Jones. Said payments were from April 1, 1969 to no later than July 1, 1976 made payable to the Elkhart County Department of Public Welfare to partially reimburse them for assistance granted pursuant to the terms of the Court Order.

8. Support payments made to Plaintiff Jones on behalf of said children have not been made by the father since June 1974.

9. A state court procedure was available to Plaintiff Jones to appeal or attempt to modify the Circuit Court order making her support payments payable to the Elkhart County Department of Public Welfare.

10. The father of Plaintiff Streiff's child has been ordered to make support payments to Plaintiff Streiff on behalf of her minor child, Shawn Kimberly Streiff. Said support payments were from February 1972 to May 1, 1975 and made payable to the Elkhart County Department of Public Welfare to partially reimburse them for assistance granted pursuant to the terms of the Court Order.

11. A state court procedure was available to Plaintiff Streiff to appeal or attempt to modify the order of the Circuit Court making her support payments payable to the Elkhart County Department of Public Welfare.

12. In accepting and using the child support payments of Plaintiffs' Mackey, Jones and Streiff, the Elkhart County Department of Public Welfare acted in accordance with the terms of court orders.

13. There was no uniform practice utilized in determining whether the support payments of AFDC recipients would be payable to the recipient or to the Elkhart County Department of Public Welfare.

14. Since AFDC benefits are paid and needs determined on a monthly basis Plaintiffs must show a month to month accounting of the amount of support payment received for each month they received the maximum AFDC award. At no time could Plaintiffs have received a payment out of their support moneys greater than their unmet need (adjusted needs minus the quantity of their AFDC award plus their income) for that month and retain eligibility for AFDC and other related benefits for that month.

15. In addition, in order to show hardship Plaintiffs must show that they did not receive more AFDC or other related benefits in hand for that particular month as a result of the payment of the support moneys to the Elkhart County Department of Public Welfare than they would have received if their support payments were made to Plaintiffs directly.

16. Plaintiffs Mackey, Jones and Streiff have shown that they received the maximum AFDC award and had

unmet needs for certain months and that support payments were made on their behalf to the Elkhart County Department of Public Welfare during those periods.

17. However, Plaintiffs have failed to produce evidence showing a month to month comparison of their support payment and their unmet needs. Plaintiffs have also failed to produce evidence to show that they would have received more total income or benefits if their support payments had been made to them directly.

CONCLUSIONS OF LAW

1. Plaintiff Mackey has failed to state a claim upon which relief can be granted because Plaintiff Mackey obtained the relief she sought from the Elkhart County Circuit Court.

2. Plaintiffs Jones and Streiff at all times had a remedy available in the Elkhart County Circuit Court to seek review of their support orders.

3. Jurisdiction over domestic matters has been traditionally reserved to state courts and such matters are not properly justiciable in federal courts.

4. Plaintiffs Mackey, Jones and Streiff have failed as a matter of law to sustain their burden of proof in showing that they were harmed as a result of the orders of the Elkhart Circuit Court making their support payments payable to the Elkhart County Department of Public Welfare.

5. Plaintiffs Mackey, Jones and Streiff have failed to state a claim upon which relief can be granted.

6. Class action relief in this cause is inappropriate because the Defendants in this cause have not acted on grounds generally applicable to a class of AFDC recipients receiving support payments on behalf of their minor children.

7. None of the Plaintiffs in this cause are proper representatives of a class of Plaintiffs which were allegedly harmed by the action of the Defendants.

8. This cause was mooted on July 1, 1976 by the passage of IC 12-1-6.1 *et seq.* by the General Assembly of Indiana which implemented the provisions of Title IV-D of the Social Security Act in Indiana.

9. Since Plaintiffs' Mackey, Jones and Streiff are not the prevailing parties in this cause an award of attorney fees under the Civil Right's Attorneys' Fee Award Act of 1976, 42 U.S.C.A. 1988 against the Defendants is inappropriate.

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss, as treated by the Court as a Motion for Summary Judgment is GRANTED; Plaintiffs' Motion for Summary Judgment is DENIED and judgment is thereby GRANTED to the Defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall bear his own costs and attorney fees in this case.

Enter March 6, 1978.

ALLEN SHARP
Judge, United States District Court.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Civil Action File No. S 74-229

CATHERINE MACKEY, et al.
vs.
WAYNE STANTON, et al.

JUDGMENT

This action came on for (hearing) before the Court, Honorable ALLEN SHARP, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that Defendants' Motion to Dismiss, as treated by the Court as a Motion for Summary Judgment is GRANTED; and Plaintiffs' Motion for Summary Judgment is DENIED, with each party bearing their own costs and attorney fees in this case.

Dated at South Bend, Indiana, this 6th day of March, 1978.

RICHARD E. TIMMONS
Clerk of Court

EUGENE J. SZYNSKI
Deputy Clerk

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

FEBRUARY 16, 1979

Before
HON. PHILIP W. TONE, *Circuit Judge*
HON. JOHN MINOR WISDOM, *Senior Circuit Judge**
HON. WILLIAM J. BAUER, *Circuit Judge*

No. 78-1513 CATHERINE MACKEY, et al., *Plaintiffs-Appellants,* vs. WAYNE STANTON, et al., *Defendants-Appellees.*	Appeal from the United States District Court for the Northern District of Indiana, South Bend Division. No. Civil S 74-229

ALLEN SHARP, *Judge.*

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause by defendants-appellees, all of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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* The Honorable John Minor Wisdom, Senior Circuit Judge of the United States Court of Appeals for the Fifth Circuit, is sitting by designation.

INDIANA STATUTES

12-1-2-3. Duties of state department.—The state department is hereby charged with the administration or supervision of all of the public welfare activities of the state as hereinafter provided. The state department:

(a) Shall administer or supervise old age assistance, aid to dependent children and assistance to the needy blind and otherwise handicapped.

(b) May supervise all correctional activities, including the operation of the state charitable, penal, reformatory, and correctional institutions, and the inspection of local jails; the operation of the school for the blind, the school for the deaf, and the board of industrial aid for the blind; the operation of all agencies and institutions caring for dependent or mentally or physically handicapped or aged adults, including the approval of the incorporation of charitable agencies, and the supervision of such other welfare activities or services as may be vested in it by law.

(c) Shall administer or supervise all public child welfare services, including services for locating and providing medical, surgical, and other aid to crippled children; the licensing and inspection of all private child-caring agencies and supervision and inspection of all local public child-caring agencies, institutions and boarding homes; supervise the care of dependent and neglected children in foster family homes, or in institutions, especially children placed for adoption or those of illegitimate birth; supervision [supervise] of [the] importation of children; and supervise the operation of all state institutions for children, except the James Whitcomb Riley Hospital.

(d) May supervise all benevolent institutions supported in whole or in part by public funds, and all noninstitutional care connected therewith. Inspect or have inspected all privately-owned and operated homes for aged people, and report such inspection and recommendations for improvement of such homes for the safeguarding of the interests of members of such homes; and wherever fraud or misrepre-

sentation to secure money from members of such homes is discovered, to report such facts to the prosecuting attorney of the county where such home is located, for further investigation and prosecution.

(d) [e] Shall provide services to county governments including the organization and supervision of county departments for the effective administration of public welfare functions, the compilation of statistics and necessary information relative to public welfare problems throughout the state, and, through the several divisions, encourage and carry on research into crime, delinquency, physical and mental disability and the cause of dependency.

(f) May make such rules and regulations and take such action as may be deemed necessary or desirable to carry out the provisions of this act [12-1-1-1—12-1-12-17] and which are not inconsistent therewith. No such rules or regulations affecting the powers, duties or functions of county or district boards or departments shall become effective until ten [10] days after a copy of the same shall be placed in the mails addressed to each county or district director in the state. Every such rule and regulation so made and issued shall contain a definite citation to the provision of the law which warrants the issuance of said rule or regulation. Copies of all such rules and regulations shall be made available to any person desiring same upon application to the board. A copy of every rule and regulation adopted by the board shall be filed in the offices of the clerk of the circuit court and auditor of each county, which copies shall be made available for use by the public. It shall be the duty of each county or district director to keep copies of such rules or regulations on file available for inspection by any person interested.

(g) Shall prescribe the form of and print and supply to the county departments blanks for applications, reports, affidavits and such other forms as it may deem necessary and advisable.

(h) Shall cooperate with the federal social security board, created under Title 7 of the "Social Security Act"

enacted by the 74th Congress and approved August 14, 1935, and any amendments thereto, and with any other agency of the federal government in any reasonable manner which may be necessary to qualify for federal aid for assistance to persons who are entitled to assistance under the provisions of that act, and in conformity with the provisions of this act, including the making of such reports, in such form and containing such information as the federal social security board or any other agency of the federal government may, from time to time, require and comply with such requirements as such board or agency may, from time to time, find necessary to assure the correctness and verification of such reports.

(i) Shall fix the fees to be paid to ophthalmologists and eye specialists for the examination of applicants for and recipients of assistance as needy blind persons.

(j) Shall appoint from eligible lists established by the Indiana personnel board such employees of the department as may be necessary to carry out effectively the provisions of this act [12-1-1-1—12-1-12-17]. No person shall be appointed by the state department who is not a citizen of the United States and who has not been a resident of the state of Indiana for a period of one [1] year immediately preceding his appointment unless a qualified person cannot be found in the state for any position as a result of holding an open competitive examination.

(k) Shall assist other departments, agencies and institutions of the state and federal government, when so requested, in performing services in conformity with the purposes of this act.

(*l*) Shall act as the agent of the federal government in welfare matters of mutual concern in conformity with the provisions of this act and in the administration of any federal funds granted to this state to aid in the furtherance of any such functions of the state government.

(m) May, under such rules and regulations as may be prescribed by the state department, designate county departments to serve as agents of the state department in the

performance of all public welfare activities in the county, and when necessary in the opinion of the state board, provide all or any part of the local administrative cost and/or cost of assistance.

(n) May classify the patients and inmates of the respective institutions of the state and transfer patients and inmated [inmates] from one state institution to another, at will, when, in its discretion, it is deemed advisable for the welfare of the patient or inmate, but no patient or inmate of a benevolent institution shall be transferred to a penal or correctional institution except in carrying out a previous commitment of a court of competent jurisdiction.

(o) Shall administer such additional public welfare functions as are hereby or may hereinafter or hereafter be vested in it by law, and provide for the progressive codification of the laws which the board is required to administer.

The provisions of this act [12-1-1-1—12-1-12-17] conferring powers of supervision on the state department of public welfare shall not be construed to include the actual management of state institutions nor the selection of the personnel of state institutions, which institutions, by the provisions of other laws, are placed under the management of specifically named boards, commissions or departments of state government.

12-1-3-7. County staff.—The county director, with the approval of the county board, shall appoint from eligible lists established by the Indiana personnel board such number of assistants as he and the county board may determine to be necessary to administer the welfare activities within the county and to perform all other duties required of the department, and shall fix the compensation of such assistants within the salary ranges of the pay plan adopted by the Indiana personnel board and approved by the state budget committee and within the lawfully established appropriations: Provided, That the provisions of this section shall not apply to institutional employees of the several county departments of public welfare. The county director, with the approval of the county board, shall determine as

to the travel allowance to be allowed each assistant, and such allowance may be fixed by the county director, with the approval of the county board, at the same sum per mile for each mile necessarily traveled in the discharge of his duties that state employees are entitled to receive. In addition each assistant shall be entitled to expenses of hotel and meals if his duties require that he travel outside the county in the performance of his duties. Travel allowance, hotel and meals shall be limited by the lawfully established appropriations made for this purpose and subject to the approval of the county council. Provided such amount shall not exceed the amount set by law for state employees.

12-1-3-8. Reimbursement to county of administrative expense.—The state shall reimburse each county to the extent of fifty per cent [50%] of the amounts expended for public employees' retirement fund charges and for personal services in the administration of the duties imposed upon the county department under the provisions of this act [12-1-1-1—12-1-12-17] providing that such employment shall have been necessary for the administration of the duties imposed upon the county department by this act and the rules and regulations prescribed by the state department.

12-1-11-1. Welfare fund.—There is hereby created, in each county in this state, a fund which shall be known as the county welfare fund, which shall be raised by a separate tax levy, in addition to all other tax levies now authorized by law, which shall be levied annually by the county council, on all of the taxable property of such county, in an amount which shall be necessary to raise the portion of such fund which the county is obliged to raise to pay the respective items, awards, claims, allowances, assistance and the other expenses as set forth in the annual budget, as provided in section ninety-nine [12-1-11-2] of this act, and such tax so levied shall be collected as other state and county taxes are collected. All of the receipts derived from such tax levy, together with all grants-in-aid, whether received from the federal government or the state, and such other money as may be provided by law, shall be paid into the county trea-

sury and shall constitute the county welfare fund. The county welfare fund is hereby made available for the purposes of paying such expenses and obligations as shall be set forth in the annual budget, as submitted and approved.

12-1-11-2. Budget.—On or before the Wednesday following the first Monday in July, 1936, and annually thereafter, the county director shall compile and the county board shall adopt a budget, which shall be in two parts, designated as Part 1 and Part 2, and which shall be in such form as shall be prescribed by the state board of accounts. Part 1 of such budget shall contain an estimate of the amount of money which will be needed by the county department, during the fiscal year next ensuing, to defray the expenses and obligations incurred and which will be incurred, by the county department, in the payment of old age assistance, assistance to dependent children, child welfare services and assistance for crippled children. Part 2 of such budget shall contain an estimate of the amount of money which will be needed for the administrative expenses of the county department, in carrying out the provisions of this act [12-1-1-1—12-1-12-17] and of the several acts which the county department is authorized and required to administer, other than the amounts of money requested in Part 1 of such budget. The county board shall, at the same time, recommend to the state department a tax levy which, in its judgment, will be required to raise the amount of revenue necessary to pay the expenses and obligations of the county department as set forth in Part 1 of such budget. When Part 1 of the county budget shall have been compiled, a copy thereof, together with the tax levy recommended by the county board, shall be transmitted to the state department. The state department shall examine the budget so submitted and the tax levy so recommended for the purpose of ascertaining and determining whether, in the judgment of the state department, the appropriations requested, as set forth in Part 1 of such budget, will be adequate to defray the expenses and obligations incurred by the county department in the payment of old age assistance, assistance

to dependent children, child welfare services and assistance for crippled children, for the fiscal year next ensuing, and whether the tax levy recommended will be sufficient to yield the amount of the appropriation as set forth in Part 1 of such budget. The state department is hereby authorized to increase or decrease the amount of Part 1 of such budget, or any item thereof, or to approve Part 1 of the budget and the several items thereof as compiled by the county board, and to recommend the increase or decrease of such tax levy or to approve the tax levy as recommended by the county board. Part 1 of the budget as finally approved and the tax levy as recommended by the state department shall be certified to the county department and Part 1 of such budget so approved and such tax levy so recommended by the state department shall thereupon be filed for consideration by the county council. Except as herein otherwise provided, Part 1 and Part 2 of the budget so submitted shall be prepared and filed in the same form and manner and at the same time as the budgets and estimates of other county officers are prepared and filed, as provided by law.

12-1-11-3. County appropriations.—(a) In the month of September, 1936, and annually thereafter, at the time provided by law, the county council shall make such appropriations out of the county welfare fund, based on the budget as submitted, as may be necessary to maintain the welfare services of the county and to defray the cost of the administration of such services, as hereinbefore provided, for the ensuing fiscal year, and shall, at the same time, levy a tax in an amount necessary to produce the funds so appropriated. If a district welfare department shall have been established, the county council of each county forming a part of such district shall appropriate such funds and make such tax levies as may be necessary to maintain the welfare services of such county, and the administrative expenses of the district department shall be defrayed by all of the counties in such district, in the proportion that the population of each county bears to the population of the entire district.

(b) If the appropriations for any or all of the welfare services of the county as contemplated in this act [12-1-1-1—12-1-12-17] shall be exhausted prior to the close of the fiscal year for which such appropriations have been made, then and in that event an emergency shall be deemed to exist as contemplated in chapter 150 of the Acts of the General Assembly of 1935 [6-1-1-24], and the county council shall, in the manner prescribed by chapter 150 of the Acts of the General Assembly of 1935, make such additional appropriations as may be necessary to provide for the maintenance of the respective welfare activities of such county welfare board, and if the amount of money in the county welfare fund or the general fund not otherwise appropriated is insufficient, the board of county commissioners shall borrow the money found to be necessary, in conformity with the provisions of sections one hundred and two to one hundred and ten [12-1-11-5—12-1-11-13], inclusive, of this act and the county council shall make the necessary appropriations for any advancements from the county general fund to the county welfare fund.

12-1-18-2. Dependent children—State reimbursement.—The state shall reimburse each county in an amount equal to sixty per cent [60%] of the amount expended in such county for assistance to dependent children in need pursuant to the provisions of chapter 7 [12-1-7-1—12-1-7-50] of this article, and, in addition thereto, the state department shall distribute among the several counties in proportion to assistance granted in such counties forty per cent [40%] of any funds received from the federal government for assistance payments to dependent children in need pursuant to the provisions of chapter 7 of this article. The state department shall also distribute among the several counties forty per cent [40%] of the administrative allowances received from federal funds for county administrative expenses in providing for assistance to dependent children. Each county shall receive a proportionate share of all distributions from each level of reimbursement on the basis that each county's eligible expenses, as determined by federal reimbursement rates, bears to the total of administrative expenses incurred by all counties. Provided, however, That at any time funds are not available or being received from the federal government for participation in the state public assistance program the state shall reimburse each county to the extent of eighty per cent [80%] of the amount necessarily expended for assistance to dependent children in need pursuant to the provisions of chapter 7 of this article during the 1951-1952 fiscal year. The state shall reimburse each county to the extent of seventy-five per cent [75%] of the amount necessarily expended for assistance to dependent children in need pursuant to the provisions of chapter 7 of this article for each fiscal year after the 1951-1952 fiscal year: Provided further, That when federal funds are subsequently restored to and received by the state for any period for which the state has reimbursed counties from state funds any such additional percentage as herein provided for, the state shall be reimbursed from such federal funds so received, the additional percentage so reimbursed to the counties from state funds, and such reimbursement shall be paid into the aid to dependent children account of the general fund and any balance of such federal participation shall be distributed as provided by law for periods when federal funds are forthcoming for such period.